

GRUMA CORPORATION
d/b/a MISSION FOODS

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 1776

**GRUMA CORPORATION D/B/A MISSION FOODS'
EMERGENCY MOTION TO RESCHEDULE HEARING**

2. A Motion to Reschedule the Hearing was filed by Respondent on November 14, 2017 based on the facts that, as currently set, the hearing falls on the week before the Christmas holiday (12/25) and in the middle of Chanukah (12/13-20); that a material witness for the Respondent, Fred Grubb, is unavailable on December 18, 2017 and the following three (3) week holiday period, due to a previously scheduled family Christmas gathering at his home in

Vermont;¹ that other witnesses for Respondent including Frank Davis (who assisted with the bargaining) also have irreconcilable scheduling conflicts due to a previously scheduled NLRB – Region 28 hearing in Phoenix, Arizona, the week of December 12, 2017, which if it moves forward would likely to extend for multiple days; and that holding a hearing the week of December 18, 2017, creates significant operational issues for Respondent.

3. The Regional Director denied that motion within twenty-four (24) hours.

4. Respondent in this matter is represented by two (2) trial attorneys – the undersigned, who had never done work for Respondent previously and only got involved in this matter in November 2017 to assist with the trial (after the devastation of his home in the U.S. Virgin Islands by Hurricanes Irma and Maria in September 2017), and Fito Agraz, who has handled Respondent’s labor matters for over ten (10) years and personally handled the investigation of the ULP’s, the position statements, responses to requests for additional information, settlement negotiations (including the settlement conference in October 2017), and is scheduled to assist with final trial preparation and is co-lead counsel for the actual hearing. As the GC anticipates calling eight (8) witnesses and the Respondent anticipates calling fifteen (15) witnesses and the fact that there are multiple allegations of threats, bad faith bargaining, unlawful withdrawal of recognition, etc., this case will require multiple counsel for each side and it is critical that Mr. Agraz be intimately involved with the preparation and handling of the trial in this matter, as he has the in-depth knowledge of Respondent and the facts and arguments here.

¹ The Undersigned met with Mr. Grubb at his home in Vermont on December 1, 2017 to assist with the trial preparation and to try to convince him to appear for the hearing on December 18, 2017. Mr. Grubb was adamant that he was not available during the holiday period that his adult children are gathered at his home in Vermont for the holidays. He indicated that he would certainly agree to appear at a rescheduled date that did not conflict with his other prior commitments, but that even if subpoenaed, he would not attend during the holiday period and that the Board would need to institute legal proceedings to enforce its subpoena, if a mutually agreeable date(s) for his testimony could not be found. Mr. Grubb provided the attached Declaration attesting to the fact that he is not available during the holiday period and will not attend the hearing as scheduled. Declaration of Fred B. Grubb filed herewith.

5. Unfortunately, Mr. Agraz has just suffered a serious medical situation that required emergency hospitalization. On Thursday, November 30, 2017, Mr. Agraz was forced to go to the Emergency Room at Kentucky One Health Jewish Hospital in Louisville, Kentucky (where he was for work on behalf of another client) with tightness in his chest, trembling right hand and pain/stiffness in his neck. He was admitted to the hospital and underwent a heart catheterization procedure for a possible heart attack. On December 1, 2017, he was discharged from hospital with diagnosis of Non-ST elevation MI (NSTEMI)² with directions to follow up with a cardiologist upon his return to his home in Dallas, Texas. He is currently not allowed to drive or fly until permitted by a doctor. He has been in contact with Dr. John Ho at the Cooper Clinic in Dallas, who is obtaining the records from the Kentucky Hospital and then will schedule an appointment. Until cleared to travel and work by his cardiologist, Mr. Agraz will not be able to assist in preparing for the trial or to attend the trial in Pennsylvania.

6. For the reasons described above, including the reasons stated in the November 14, 2017 Motion, good cause exists for the requested rescheduling of the hearing date.

7. This motion is made in good-faith based on the circumstances as set forth above and is not intended to unnecessarily delay the proceedings.

8. The Undersigned has provided a draft of this motion to Counsel for the General Counsel and the Union on December 4, 2017 and they have not yet indicated whether they oppose the rescheduling of the hearing for these reasons.

WHEREFORE, based on the foregoing, Respondent respectfully requests that the hearing currently scheduled for 10:00 a.m. on Monday, December 18, 2017, be rescheduled to for a mutually available date on or after January 15, 2017

² "NSTEMI is a type of heart attack." <https://myheart.net/articles/nstemi/>

Dated this the 5th day of December, 2017.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

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Attorneys for Respondent

CERTIFICATE OF SERVICE

This is to certify that on the 5th day of December, 2017, a .pdf copy of Gruma Corporation d/b/a Mission Foods' Motion to Reschedule Hearing was filed through the NLRB E-Filing system and, in accordance with NLRB Rules and Regulations Section 102.114(i), served by certified mail, return receipt requested, to:

Mr. Dennis P. Walsh
Regional Director, Fourth Region
National Labor Relations Board
615 Chestnut Street, #710
Philadelphia, PA 19106

Lawrence M. Goodman, Esquire
Danielle K. Newsome, Esquire
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103

United Food and Commercial Workers Local 1776
3031 A Walton Road
Plymouth Meeting, PA 19462

Dated this the 5th day of December, 2017.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By:

Charles E. Engeman /s/ *Charles E. Engeman*
Charles E. Engeman, Esq.

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GRUMA CORPORATION
d/b/a MISSION FOODS

and

UNITED FOOD AND COMMERCIAL
WORKERS LOCAL 1776

DECLARATION OF FRED B. GRUBB

- I declare under the pains and penalties of perjury that foregoing is true and correct to the best of my knowledge and belief.

DATED: December 4, 2017



FRED B. GRUBB